REMARKS

By this Amendment, Applicant amends claims 27, 37, 44, 45, 60, 90, 97, 123, 130, 152, 156, 182, 186, and 190, and adds new claims 293-302. Applicant respectfully submits that the pending claims are in condition for allowance.

Applicant gratefully acknowledges the Examiner's withdrawal of the previous rejection of claims 1-17, 19-50, 52-80, 82-113, 115-146, 148-176, and 178-192 under 35 U.S.C. § 112, second paragraph.

In the Office Action, the Examiner objected to the title of the application as not being descriptive. Although Applicant does not necessarily agree with the Examiner's objection, Applicant has amended the title to recite "Device for Dispensing Product Having Flexible-Walled Pouch and Airless Pump." This objection should therefore be withdrawn.

In the Office Action, the Examiner objected to claims 37, 44, 45, 152, and 182. Applicant has amended each of these claims as suggested by the Examiner, and respectfully requests that the objection be withdrawn.

In the Office Action, claims 27, 60, 90, 122, 156, and 186 were rejected under 35 U.S.C. § 112, second paragraph. The Office Action asserts that the limitations "ADMER grade SF 600, ADMER grade SE 800, ADMER grade SF 620E, LOTADER grade TX8030, and LOTADER grade HX8020" in the claims are trademarks or trade names that are not being used to properly identify a particular material or product. Although Applicant does not necessarily agree with this rejection, Applicant has deleted these limitations, without prejudice or disclaimer, thereby rendering this rejection moot.

Claim 190 was provisionally objected to as being a substantial duplicate of claim 31. By this Amendment, claim 190 has been amended to replace "30" with "189", thereby rendering this rejection moot.

In the Office Action, claims 1, 2, 7-10, 13, 20, 21, 29-33, 34, 35, 40-43, 46, 53, 54, 62-64, 97, 98, 100-106, 109, 116, 117, 125-129, 130, 131, 133-139, 142, 149, 150, 158-160, and 190 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,505,338 to Gueret ("Gueret"); claims 97, 98, 100-106, 109, 116-118, 121, 122, 124-129, 130, 131, 133-139, 142, 149-151, 154, 155, and 157-160 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,322,020 to Stone ("Stone"); claims 97, 115, 130, and 148 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,497,911 to Ellion et al. ("Ellion"); claims 130-132, 134-146, 151, 152-154, 157, 161-162, 164-176, 181-184, 187, and 191-192 were rejected under 35 U.S.C. § 102(b) as being anticipated by JP 09077136A to Kogyosho ("Kogyosho"); claims 1-17, 22-23, 34-50, 53-80, 83-113, 116-146, 149-176, and 179-192 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kogyosho in view of Gueret; claims 1, 19, 34, and 52 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ellion in view of Gueret; claim 82 was rejected 35 U.S.C. § 103(a) as being unpatentable over Kogyosho and Gueret as applied to claim 65, and further in view of U.S. Design Patent D338,828 to Segati ("Segati"); and claim 178 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kogyosho in view of Segati.

In summary, claims 1-17, 19-50, 52-80, 82-113, 115-146, 148-176, and 178-192 were rejected as being anticipated and/or obvious over one or more of the references described below, taken alone or in combination.

Gueret discloses a product dispenser (1) comprising a container (4) having a bag (2) made from a deformable plastic located therein, and a base for securing the bag to the top of the container, the container having a bottom (5) including an orifice (6) to establish communication with the atmosphere. A hand pump (8) is fixed onto the base (7). The bottom (11) of the base (7) includes "anti-trapping members" 27, in the form of fins 28 to prevent the walls of the flexible bag (2) from bonding against one another and from trapping a volume of product in the lower part. (Col. 4, lines 27-38.) Gueret also mentions the possibility of an anti-trapping device in the form of a grid or a perforated tube. (Col. 4, lines 38-41.)

Stone discloses an invertible pump sprayer (1) comprising a flexible bag (2) for containing a material to be dispensed, a spray pump (3) for dispensing the material, a "dip tube" (4), and a rigid protective container (6). The rigid protective container (6) has an opening (7) in the bottom thereof so that the inner flexible bag can be exposed to atmospheric pressure. As the liquid material is dispensed by the spray pump (3), the bag collapses about the dip tube (4). (Col. 4, lines 21-25.) Perforations (25) are provided over most of the length of the dip tube, so that liquid will always be able to enter the dip tube regardless of how the bag collapses around the tube. (Col. 4, lines 26-31.) "Also, this arrangement insures that the liquid will always be accessible to the pump mechanism that draws the liquid material from the bag, regardless of the position of the sprayer." (Col. 4, lines 31-34.)

Ellion discloses a spray bottle (1) with a conventional hand pump (2), a dip tube (3) with multiple entry ports (4) along its length, a flexible bladder (5) surrounding the dip tube and containing the liquid to be dispensed, and a container with small inlet

air ports (7a) that admit air into the space (8) between the container (7) and the flexible bladder (5) to fill the void left by the dispensed liquid (9). Liquid (6) held within the bladder is maintained at approximately constant pressure by the air admitted to the container, and only liquid contacts the dip tube. "The result is that liquid can be pumped out of the bladder when the container is held in any orientation." (Col. 3, line 54 - col. 4, line 2.)

Kogyosho discloses a cylindrical laminated bottle (1) with an outer layer (11) and inner layer (12). The inner layer (12) is positionable within the more rigid outer layer (11). The inner layer (12) peels off the outer layer and shrinks as the contents decrease. The inner layer is joined to the outer layer at three joint parts (13A-13C) and is peelable from the outer layer in other areas. The joint parts (13A-13C) are axially provided along the entire length of the bottle (1), and are arranged at regular intervals circumferentially. The three separate inner layers (12A-12C) end shrinking when their circumferential central parts reach the center of the laminated bottle. (Abstract from Patent Abstracts of Japan.) According to the computer translation of the Abstract, the advantage of the invention is that it "pours contents from bottle completely until last drop till last minute", avoiding residual contents and ensuring effective use of the contents. (Abstract from Derwent.)

Segati discloses a combined dispensing container and cap, as shown and described in the figures of the design patent.

Applicant respectfully asserts that all of the pending claims, including independent claims 1, 34, 65, 97, 130, and 161, are allowable over the above documents for the reasons set forth below.

Independent claims 1 and 34, along with various other claims, were rejected as being anticipated by Gueret. This rejection should be withdrawn. Claims 1 and 34 recite a device for dispensing a product, comprising, among other things, a dip tube having a free end located substantially at a mid-point of an axial height of a pouch.

Gueret does not disclose or suggest a dip tube having a free end located substantially at a mid-point of an axial height of a pouch. The Examiner has alleged that the anti-trapping members 27 are a dip tube with a free end 30 located substantially at the mid-point of an axial height of the flexible bag 2. (Office Action at 5-6.) Applicant respectfully disagrees. Gueret does not disclose anti-trapping members 27 as being a dip tube. Instead, Gueret discloses anti-trapping members 27 in the form of fins 28 with substantial slot-shaped gaps being defined between adjacent fins, as shown in Fig. 3 of that reference. These fins are for the purpose of preventing the walls of the flexible bag 2 from bonding against each other. They are not a dip tube.

Gueret also discusses the possibility of an anti-trapping member in the form of a "perforated tube." (Gueret, col. 4, lines 39-41.) However, Gueret does not have a drawing illustrating this embodiment or have any discussion of where the free end of such a perforated tube would be located. Therefore, even in the embodiment with a perforated tube, Gueret does not disclose a dip tube having free end located substantially at a mid-point of an axial height of a pouch, and therefore cannot anticipate claims 1 and 34. See MPEP 2131 (explaining that a claim is anticipated only if each and every claim limitation is found in single prior art reference).

Independent claims 1 and 34 were also rejected under 35 U.S.C. § 103(a) as unpatentable over Kogyosho in view of Gueret. This rejection should be withdrawn.

As an initial matter, Applicant notes that the "computer translation" of Kogyosho, which is mentioned in the Office Action at page 8, footnote 1 and in the PTO-892, was not attached to the Office Action. Applicant respectfully requests a copy of that document and also a copy of the "human" translation mentioned in footnote 1. Applicant reserves the right to submit further remarks concerning Kogyosho after Applicant has an opportunity to consider that information.

Setting aside the issue of whether or not Kogyosho even mentions a dip tube, the figures of that reference do not appear to show any structure for a dip tube. Furthermore, the Examiner acknowledges that Kogyosho "is silent as to the particulars of the dip tube." (Office Action at 9.) Despite that acknowledgement, the Examiner asserts that it would have been obvious to substitute the alleged "dip tube (27) of Gueret" for the alleged "dip tube ... of Kogyosho in order to prevent the walls of the flexible pouch from bonding against one another and trapping a volume of the product as explicitly taught by Gueret." (Office Action at 9.) This combination fails for several reasons.

First, as set forth in the above discussion of claims 1 and 34, Gueret does not teach a dip tube having a free end located substantially at a mid-point of an axial height of a pouch. As previously discussed, the anti-trapping member of Gueret is in the form of fins defining slot-shaped gaps, or in the alternative, a perforated tube. Gueret does not disclose or suggest a dip tube having a free end located substantially at a mid-point of an axial height of a pouch.

Second, there is no motivation or suggestion to combine the references. The Examiner is merely using hindsight gleaned from Applicant's disclosure to combine two

diseparate references. Moreover, the Examiner has not cited any evidence in support of his apparent assertion that the addition of a dip tube would necessarily prevent the walls of a flexible pouch from bonding against one another -- the asserted rationale of the Examiner for making the combination of Kogyosho and Gueret. This is not what Gueret teaches. Instead, Gueret teaches that anti-trapping members 27, such as fins 28, function to prevent the walls of a flexible bag from bonding against one another. (Gueret, col. 4, lines 27-41.) Gueret does not teach that a dip tube assists in this function in any manner. Instead, Gueret teaches that the fins 28 perform this function. Therefore, the Examiner's assertion that this function is performed by a dip tube is incorrect. The Examiner appears to be gleaning a motivation to combine the references solely from the Applicant's disclosure, something that is specifically prohibited by the Board of Appeals and the Federal Circuit. MPEP 2143.01.

For at least these reasons, the rejection of independent claims 1 and 34 based on Kogyosho in view of Gueret should be withdrawn.

Independent claims 65 and 161 were also rejected under 35 U.S.C. § 103(a) as unpatentable over Kogyosho in view of Gueret. Claim 65 recites a dip tube having a free end located substantially at a mid-point of an axial height of a pouch. For at least the reasons set forth with respect to claims 1 and 34, the combination fails, particularly because neither Kogyosho nor Gueret discloses the recited limitation, and because there is no motivation to combine the references.

Claims 65 and 161 further recite a "pouch [that] is fixed longitudinally to an interior wall of the container along at least one fixing region." As stated previously, there is no motivation to combine Kogyosho and Gueret. In particular, the Examiner

has not provided the requisite motivation to add dip tube features to the Kogyosho reference. Any such motivation is gleaned solely from Applicant's disclosure, something that is specifically prohibited by the Board of Appeals and the Federal Circuit.

Independent claims 97 and 130 were rejected over a number of references. Independent claims 97 and 130 were rejected as being anticipated by Gueret. Both claims, as amended, recite a device for dispensing a product, comprising, among other things, a "dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." Gueret does not include at least the above limitation, and therefore cannot anticipate. Gueret does not disclose a dip tube having an opening at the free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube. Instead, in all of the embodiments of Gueret, there are openings along the axial extent of the anti-trapping device. For example, in the embodiment including fins 28, substantial slot-shaped gaps for the flow of product are defined between adjacent fins. This therefore does not meet the claim limitation that the opening at the free end is the only inlet for the flow of product into the dip tube. Another embodiment discussed at col. 4, lines 39-41 of Gueret, has a perforated tube as the anti-trapping member 27. A perforated tube does not meet the limitation of an dip tube having an opening at the free end of a dip tube, the opening being the only inlet for the flow of product into the dip tube. Perforations are additional openings and therefore, Gueret does not meet this claim limitation. Consequently, the rejection of claims 97 and 130 as being anticipated by Gueret should be withdrawn for at least this reason.

Independent claims 97 and 130 were additionally rejected as being anticipated by Stone. Stone discloses a sprayer (1) with a "dip tube 4" having perforations (25) provided over the length of the tube. Stone discloses that liquid can enter these perforations. (Stone, col. 4, lines 26-34.) Because Stone has perforations 25 along the length of the tube 4, it does not meet the limitation of a "dip tube having an opening at free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." For at least this reason, the rejection of independent claims 97 and 130 as anticipated by Stone should be withdrawn.

Independent claims 97 and 130 were additionally rejected as being anticipated by Ellion. Ellion discloses a hand held spray bottle 1 with a hand pump including a "dip tube 3" having "multiple entry ports 4 along its length." (Ellion, col. 3, lines 54-57.) Because Ellion has holes or entry ports along the length of the tube 3, it does not meet the limitation of a "dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." For at least this reason, the rejection of independent claims 97 and 130 as anticipated by Ellion should be withdrawn.

Claims 97 and 130 were additionally rejected as being unpatentable over Kogyosho in view of Gueret. Both claims recite that the "dip tube extending in the interior of the pouch, the dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." Kogyosho and Gueret lack any disclosure or suggestion of the subject matter of claims 97 and 130. Therefore, these claims are allowable.

Claims 130 and 161 were also rejected as being anticipated by Kogyosho. Claims 130 and 161 both recite a "dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." As discussed above, the Examiner admits that Kogyosho "is silent as to the particulars of the dip tube." (Office Action at 9.) Therefore, Kogyosho cannot anticipate claims 130 and 161, which specifically require a "dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." The rejection of independent claims 130 and 161 as being anticipated by Kogyosho should be withdrawn.

Independent claims 1 and 34 were also rejected as being unpatentable over Ellion in view of Gueret. Claims 1 and 34 both recite a dip tube having a free end located substantially at a mid-point of an axial height of a pouch. Ellion does not disclose the "dip tube 3" having a free end located substantially at a mid-point of an axial height of a pouch. Instead, the "dip tube 3" extends substantially to the bottom of the flexible bladder 5, as shown in Fig. 1. Gueret fails to make up for the deficiencies of Ellion. For example, Gueret does not disclose or suggest a dip tube having a free end located substantially at a mid-point of an axial height of a pouch. As previously discussed, the anti-trapping member of Gueret is in the form of fins defining slot-shaped gaps, or in the alternative, a perforated tube. Gueret does not provide any motivation to modify the dip tube of Ellion to have a free end located substantially at a midpoint of an axial height of a pouch. For at least these reasons, the rejection of claims 1 and 34 as being unpatentable over Ellion in view of Gueret should be withdrawn.

Applicant's arguments above have been primarily focused on the pending independent claims that have not been withdrawn from consideration. The dependent claims that depend from the above discussed independent claims are allowable at least due to their dependency from the independent claims, in addition to the additional limitations recited in the dependent claims.

Additionally, by this Amendment, Applicant has added new dependent claims 293-302, that recite additional claim limitations. (Each of these new claims "reads" on the previously elected species.) For example, claims 293, 295, 298-300, and 302 recite that "the dip tube is an unperforated cylindrical tube." Also, claims 294, 296, 297, and 301 recite that "the dip tube has an opening at the free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube." Applicant respectfully submit that these new claims are allowable over the prior art.

Applicant respectfully requests the reconsideration of this application, the withdrawal of all of the claim rejections, and the timely allowance of the pending claims.

The Office Action contains numerous statements reflecting characterizations of the claims and cited art. Regardless of whether any such statement is addressed herein, Applicant declines to subscribe to any statement or characterization in the Office Action.

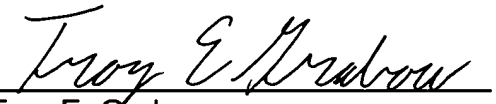
Applicant also notes that Applicant did not receive a copy of the PTO 1449 that was indicated as attached to the April 6, 2004 Office Action. Applicant respectfully requests a copy of the PTO 1449 indicating that the listed documents were considered by the Examiner.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: September 3, 2004

By: 

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